

REMARKS

By this Amendment, Applicant has canceled claim 13 without prejudice or disclaimer. Accordingly, the status of the claims are as follows:

Claims 2-12 are pending; and

Claims 1 and 13 are canceled.

In the Office Action, the reissue declaration was objected to under 37 C.F.R. §1.175(a)(1); claims 1-13 were rejected under 35 U.S.C. § 251 as being based on a defective reissue declaration; and claims 2-13 were rejected under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over claims 81-86 of U.S. Patent No. RE37,315 E.

Applicant submits herewith a new Reissue Declaration that specifically identifies at least one error being corrected by this reissue application. In view of this, Applicant requests withdrawal of the objection under 37 C.F.R. §1.175(a)(1) and the rejection under 35 U.S.C. § 251.

Although Applicant does not necessarily agree with the double patenting rejection set forth in the Office Action, to obviate this rejection and to expedite prosecution and allowance of this application, Applicant submits herewith a Terminal Disclaimer. The filing of this Terminal Disclaimer in no way manifests an admission by Applicant as to the propriety of the double patenting rejection set forth in the Office Action. See M.P.E.P. §804.02 citing Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870 (Fed. Cir. 1991) ("In legal principle, the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection").

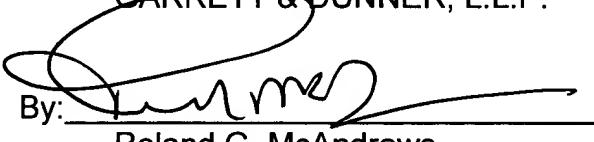
Should the need arise at a later date, Applicant reserves the right to present arguments regarding the merits of the double patenting rejection and the alleged obviousness of the application claims in view of claims in U.S. Patent No. RE37,315 E. Accordingly, Applicant requests approval of the Terminal Disclaimer and the withdrawal of the double patenting rejection.

In view of the above, Applicant submits that pending claims 2-12 are in condition for allowance. Applicant requests reconsideration and the timely allowance of the pending claims.

If there is any fee due in connection with the filing of this Preliminary Amendment, please charge the fee to our Deposit Account No. 06-0916.

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